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Parental Rights in Special Education

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Parental Rights in Special Education

New Jersey Administrative Code for special education (N.J.A.C. 6A:14) and the federal Individuals with Disabilities Education Act (IDEA) are laws that ensure children with disabilities a free, appropriate public education in the least restrictive environment. An important part of these laws provides parents with the right to participate in their children's education.

You and representatives of your school district are team members who are responsible for developing an appropriate educational program for your child. This document will describe the state and federal laws affecting the provision of special education to help you understand your rights in the special education process. With this knowledge, you will be prepared to take an active role in your child's education.

This document has been developed for you by experienced parents and educators of children with disabilities in collaboration with the Department of Education, Office of Special Education Programs. We wish to acknowledge and thank the following parents and professionals who participated in the development and review of the draft of this document. They include:

Brian Earls, *parent and volunteer for the New Jersey Center for Outreach and Services for the Autism Community (COSAC)*

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This is the procedural safeguards statement required in accordance with New Jersey Administrative Code (N.J.A.C.) 6A:14-2.3(e)7.

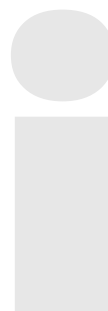
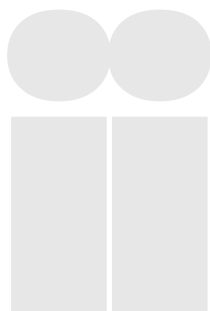




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Parental Rights in Special Education

REFERRAL

What is a referral?

A referral is a written request for an evaluation that is given to the school district when a child is suspected of having a disability and might need special education services.

Who can make a referral?

- Parents
- School personnel
- Agencies concerned with the welfare of students

If you believe that your child may have a disability, you may refer your child for an evaluation by submitting a written request to your school district¹.

What happens when a referral is made?

Within 20 calendar days² of receiving a referral, the school district must hold a meeting to decide whether an evaluation will be conducted. If an evaluation will be conducted, another decision is made about the types of testing and other procedures that will be used to determine if your child needs special education services.

DECISION-MAKING AND PARTICIPATION IN MEETINGS

How are decisions made about my child's special education needs?

Decisions regarding your child's special education needs are made at meetings. As the parent of a child who has or may have a disability, **you have the right to participate in meetings regarding:**

- **Identification** (decision to evaluate);
- **Evaluation** (nature and scope of assessment procedures);
- **Classification** (determination of whether your child is eligible for special education and related services);
- Development and review of your child's **individualized education program (IEP)**;
- Educational **placement** of your child; and
- **Reevaluation** of your child.

You are considered a member of the multi-disciplinary team of qualified persons who meet to make these determinations and develop your child's individualized education program (IEP).

¹When writing to the school district about special education issues, you may write to the school principal, director of special education, child study team supervisor, case manager or other appropriate school official.

²This time frame excludes school holidays, but does not exclude summer vacation.



You have the right to:

- Have an interpreter, translator or sign language interpreter provided by the school at no cost to you, when necessary; and
- Participate in required meetings through other means such as individual or conference telephone calls if you cannot attend in person.
- Receive a copy of the evaluation reports(s), documentation and information that will be used for a determination of eligibility not less than 10 calendar days prior to the eligibility meeting.

NOTICE OF MEETING

How will I be invited to participate in meetings?

To assure that you have the opportunity to participate in meetings and the decision-making process for your child, meetings about special education for your child must be scheduled at a time and place agreeable to you. The school district must notify you in writing early enough to ensure that you will have an opportunity to attend.

What information must be included in the notice of a meeting?

The written notice of the meeting must state the purpose, time, location and who will be attending and:

- Inform you that you may invite to the meeting other individuals who have knowledge or special expertise regarding your child, including related services personnel. The determination of whether the individual has such knowledge or special expertise is determined by the party (you or the school district) who invited the individual;
- Beginning at age 14, or younger, if appropriate, the notice for a student with a disability must also indicate that the purpose of the meeting will be the development of a statement of the transition service needs, and that the school will invite the student to attend the meeting; and
- Beginning at age 16, or younger, if appropriate, the notice for a student with a disability must also indicate that the purpose of a meeting is the consideration of needed transition services and that the school will invite the student to attend the meeting.


WRITTEN NOTICE

How will I be informed of decisions regarding my child's special education needs?

Your school district will inform you of decisions being made about your child by giving you written notice.

Written notice must be given before the school district:

- **Proposes to start or change:**
 - The identification, evaluation, and classification;
 - The implementation of an IEP or educational placement;
 - The provision of a free, appropriate public education (FAPE) to your child; and
 - A reevaluation;
- **Asks for consent;** and

- 
- **Approves or denies a request** you have made in writing about the identification, evaluation, educational placement or provision of a free, appropriate public education to your child.

What must be included in written notice?

Written notice must include a full description of the district's proposal and a statement of your rights under special education law.

When providing notice, the school district must always:

- Describe the action it is proposing or refusing;
- Explain why it is or is not taking the action;
- Describe other options considered and explain why those options were rejected;
- Describe the procedures, tests, records or reports used by the district to make the decision;
- Describe any other factors relevant to the district's proposal or refusal; and
- Include notice of your rights under special education law:

You must be given a copy of this booklet whenever:

- ✦ Your child is referred for an initial evaluation;
- ✦ You are notified of an IEP meeting;
- ✦ A reevaluation will be conducted; and
- ✦ A request for a due process hearing is submitted to the Department of Education.

All other times, the district must give you a statement explaining:

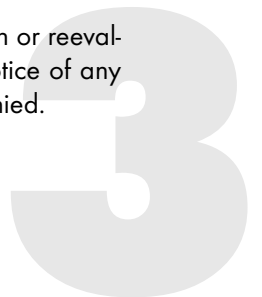
- ✦ That as a parent of a student who is or may be eligible for special education services, you have rights under special education law;
- ✦ How you can obtain a copy of the procedural safeguards statement (PRISE); and
- ✦ Sources you may contact for assistance in understanding the special education rules.

NATIVE LANGUAGE AND WRITTEN NOTICE

Written notice must be in language understandable to the general public and in your native language or other principal mode of communication. If this is not a written language, the school must take steps to ensure that the notice is translated orally or by other means into your native language or other mode of communication. If your language is not a written language, the school district must assure that you understand the notice, and it must document that you understand the notice.

When must the district provide me with written notice?

Within 15 calendar days of a meeting regarding identification, evaluation or reevaluation, the IEP, or placement, the school district must give you written notice of any decisions that were made and/or any actions that were proposed or denied.





When will the district take the action described in the notice?

After you have received the written notice, you have the opportunity to consider the decisions or proposed actions for up to 15 calendar days. This gives you the opportunity to agree or disagree with the district's proposal. You can allow the school district to start the proposed action sooner by agreeing in writing.

CONSENT

What does consent mean?

Consent means that you have been given all the information necessary to make an informed decision about the proposed activity. Consent also means that you understand and agree in writing to the proposed activity. Therefore, written notice must be part of any request for your written consent.

Consent is immediate. This means, after you have given your written consent, the school district must start the activity as soon as possible.

When must the school district obtain my consent?

Your consent is required:

- **Before your child is evaluated for the first time** to determine whether your child is eligible for special education;
- **Before your child's special education program starts for the first time;**
- **Before your child is tested as part of a reevaluation.** However, if the district can show that it tried to get your consent for the reevaluation of your child and you did not respond, then the district may proceed to evaluate without your consent; and
- **Before your child's records are released** to a person or organization that is not otherwise authorized to see them.

What happens if I do not give consent for the proposed activity?

If you disagree with the proposed initial evaluation, reevaluation, or release of records and will not give consent, the school must ask for a due process hearing (see page 13) unless you and the school district reach an agreement on a different course of action. At the due process hearing, an administrative law judge (ALJ) will decide if your child can be evaluated, reevaluated or if your child's records can be released.

Can I withdraw my consent after it has been given?

Giving consent is voluntary. You can revoke (withdraw) your consent at any time by writing the school. Revoking consent does not negate an action that has occurred after the consent was given and before the consent was revoked. If you revoke consent after your child has been in a special education program, the school district must request a due process hearing within 20 days³ unless you reach some other agreement with your district. In the interim, the school must continue to provide the services specified in the IEP.

³Unless specified otherwise, the term "days" refers to calendar days.



Must the school district obtain my consent each time there is a proposal to change my child's program or placement?

No. Once services have started, you or the school district may propose changes to your child's program or placement at an IEP meeting. Your consent is not required to implement the changes. The school district must provide you with written notice of the proposed changes as described above.

How can I stop the proposed action when I disagree?

You must request mediation or a due process hearing before the 15 days have passed. To request mediation or a due process hearing, you must put your request in writing and send it to the Department of Education. A mediation/due process hearing request form is included at the end of the booklet. While the disagreement is being resolved, your child's current placement and services will remain the same. This is called a "stay-put."

If you disagree with the proposed action and you do not inform the school district of your disagreement by requesting mediation or a due process hearing, the proposed action will start after the 15 days have passed.

PARENTAL REQUESTS

You may request a change in the evaluation, eligibility, IEP or placement of your child. Whenever you make a request of the school, you should make the request in writing and keep a copy for your records. The school has 20 calendar days to answer you in writing. School holidays are not counted in the 20 days. But, schools are required to respond within 20 days during the summer. The answer must include the components of notice (see page 2).

EVALUATION

What is an evaluation?

An evaluation is the process used to determine whether your child has a disability. This process includes a review of any relevant data, and the individual administration of any tests, assessments and observations of your child. For an initial evaluation, at least two child study team members⁴ and other specialists⁵ as required or as determined necessary must participate.

When is an evaluation needed?

An evaluation is needed when you, the members of the child study team, and your child's teacher (to the extent appropriate) meet and decide that your child may have a disability.

⁴When the suspected disability is a language disorder, the speech-language specialist may participate as one of the two required child study team members.

⁵Specialists include but are not limited to speech-language specialists, occupational therapists, physical therapists, and physicians.



INDEPENDENT EVALUATION

What is an independent evaluation?

An independent evaluation is conducted by a qualified examiner(s) who is not employed by your school district. If you disagree with the evaluation done by your district, you have the right to have an independent evaluation.

What are the requirements for an independent evaluation?

An independent evaluation is provided at no cost to you. It is at public expense. If, as part of a due process hearing, an administrative law judge requests an independent evaluation, it, too, must be at public expense. Independent evaluations must meet the same requirements as evaluations conducted by the school district.

What if the school district believes its evaluation is appropriate?

When the school district disagrees with the need for an independent evaluation, the school district must ask for a due process hearing within 20 days of receipt of your request. If an administrative law judge decides that the district's evaluation was appropriate, the district will not have to pay for the independent evaluation. Your right to obtain an independent evaluation at your own expense would not change.

Where can an independent evaluation be obtained?

An independent evaluation may be obtained from another school district, an educational services commission, a jointure commission, an approved clinic or agency, or a private practitioner, who is certified and/or licensed as required. Information regarding these resources must be provided by your school.

What is the school district required to do when it receives an independent evaluation?

The school district must consider any independent evaluation, including one you pay for, when making decisions regarding your child's special education program. An independent evaluation may be presented as evidence at a due process hearing.

ELIGIBILITY

How is eligibility determined?

When the evaluation is completed, eligibility is determined collaboratively at a meeting according to N.J.A.C. 6A:14-2.3(i)1. To be eligible for special education and related services:

- A student must have a disability according to one of the eligibility categories;
- The disability must adversely affect the student's educational performance; and
- The student must be in need of special education and related services.

The school district must provide a copy of the evaluation report(s) and documentation of eligibility to the parent (or adult student, when applicable) when the written notice is provided.





INDIVIDUALIZED EDUCATION PROGRAM (IEP)

What is an individualized education program?

After your child is determined to be eligible for special education and related services, a meeting will be held to develop your child's IEP. The IEP is a written plan that describes in detail your child's special education program. The IEP should describe how your child currently performs and your child's specific instructional needs. The IEP must include measurable annual goals and short term objectives or benchmarks.

Who must attend the IEP meeting?

- Student, if appropriate⁶;
- Parent;
- Regular education teacher (to the extent appropriate), if the student is or will be participating in regular education;
- Special education teacher (or special education provider where appropriate);
- At least one child study team member;
- Case manager;
- School district representative;
- Others at the discretion of the parent or school district; and
- If transition will be discussed at the IEP meeting, a representative of any other agency likely to provide or pay for services.

You have the right to:


- Copies of your child's IEP;
- Bring others with you to the meetings;
- Tape record IEP meetings;
- Have the IEP implemented within 90 days of the school's receipt of your consent for the first evaluation;
- Have the IEP implemented as soon as possible following an IEP meeting;
- Have the IEP reviewed at least annually; and
- Have extended school year services considered.

REEVALUATION

How often must my child be reevaluated?

Your child must be reevaluated every three years, or sooner if conditions warrant, or if you or your child's teacher requests it. The school district must reevaluate your child before determining that your child is no longer a child with a disability.

⁶Beginning at age 14, the student must be invited to attend the IEP meeting to meet the requirements for transition planning.





What are the requirements for a reevaluation?

The IEP team must meet to review the current data and decide whether additional testing is required to continue your child's eligibility for special education services. The IEP team may decide that no additional information is needed to determine your child's continuing eligibility for special education. As a member of the team, you may disagree with the decision and you may request that the school district conduct an assessment of your child. Then, the school district must assess your child to determine eligibility (or ineligibility).

Does the school district need my consent to reevaluate my child?

The school must obtain your consent before conducting any testing as part of a reevaluation of your child. However, if the school can show that it tried to get your consent for the reevaluation of your child and you did not respond, then the school may proceed with the reevaluation as planned.

TRANSFER OF RIGHTS UPON REACHING AGE OF MAJORITY

What rights do I have when my child reaches age 18?

When your child reaches age 18, all rights under special education law will transfer to your child unless a court has appointed a legal guardian for your child. Both you and your adult student will receive all the required notices contained within these parental rights. At least three years before your child turns age 18, the school district must inform both you and your child of the transfer of these rights.

CONFIDENTIALITY AND ACCESS TO EDUCATIONAL RECORDS⁷


Can I see my child's educational records?

School districts must maintain the confidentiality of information in your child's educational record. However, the public school maintaining your child's educational records must assume you have authority to inspect/review your child's records unless the school has been legally notified in writing that your rights have been terminated under state law, such as guardianship or divorce.

You have the right to:

- Ask to see a list of all the types of records kept on your child and where the records are kept;
- Look at any of your child's educational records which are kept or used by the school district:
 - ✦ Without unnecessary delay;
 - ✦ Before any IEP meeting or hearing; and
 - ✦ Within 10 days after asking to see the records.
(This request should be in writing.)
- Ask for an explanation and interpretation of the records;

⁷The regulations for pupil records are found at N.J.A.C. 6:3-6.1.
The school district is required to give you a copy when you ask.

- 
- Obtain copies of the records. A school may charge a reasonable fee for copying if that fee does not prevent you from reviewing the records. The school may not charge a fee to search for or retrieve the records;
 - Be notified before information in your child's records is destroyed; and
 - To give consent or refuse to give consent to share your child's records with anyone who does not have an educational or legal purpose in seeing them.

The school must keep a record of those obtaining access to your child's record, including names, dates and purposes for the access. If you ask, you have a right to be told who has been given information from your child's records, the date it was given and how it was used.

The school district must obtain your written consent, before any personally identifiable information about your child may be released to any person not otherwise entitled by law to have access to it (see page 4).

If you give the school written consent, you can have someone else receive and/or review the records for you. If a record has information on more than one child, you may look at the information about your child only.

How do I get my child's records changed?

You may ask the school district to change your child's educational records if you believe the records:

- Are irrelevant;
- Are inaccurate;
- Do not protect privacy or other rights of your child; or
- Are otherwise improper.

If you ask the school district to change your child's record, you have a right to receive a decision about your request. The school district may decide to make the change and inform you of the change in writing; otherwise, the school district must meet with you within 10 days to determine whether the change will be made.

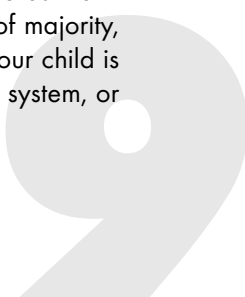
If the school district will not make the change, it must inform you of their refusal and your right to appeal by requesting a due process hearing (see page 13).

If an administrative law judge decides at a due process hearing that the records do not need to be changed, the school district must notify you in writing of your right to add a statement to your child's records giving the reasons you do not agree with the school's records. This statement must be maintained in your child's records as long as the relevant record is maintained, and the statement must be released whenever the relevant record is disclosed.⁸

Do I have a right to review my child's records when he becomes an adult student?

Until your child reaches age 18, you have access to all educational records maintained by the school. After the transfer of rights upon reaching the age of majority, you have the right of access to your child's educational records only if your child is still financially dependent on you and is still enrolled in the public school system, or if you have your adult child's consent for access.

⁸According to pupil records code, N.J.A.C. 6:3-6.4(d), mandated or permitted records that are required for special education must be maintained for a period of five years after completion of the program activities.





SURROGATE PARENT

When a student's parent(s) cannot be identified or located or if the state has guardianship of the student, a surrogate parent must be appointed. The responsible district must have a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent to a child when necessary. The responsible district must ensure that the person selected as a surrogate parent has no interest that conflicts with the interests of the child and that the surrogate parent has sufficient knowledge and skills to serve as a surrogate parent. This person must be selected in accordance with state law and cannot be an employee of the school district, the New Jersey Department of Education or other agency involved in the education or care of the child. A person who otherwise qualifies to be a surrogate parent is not considered an employee of the district or other agency when he or she is paid by the agency to serve as a surrogate parent. The surrogate parent represents the child in all matters relating to identification, evaluation, development of the IEP, placement and provision of a free, appropriate public education (FAPE).

PLACING YOUR CHILD IN A NONPUBLIC (PRIVATE) SCHOOL – DUE TO DISAGREEMENT

If I disagree with the school district's program and I place my child in a nonpublic (private) school, who is responsible to pay for the costs?

Your child has the right to a free, appropriate public education. If your child is enrolled in a public school and you disagree with the school district's special education program, you may choose to place your child in a approved private school for students with disabilities, a nonpublic school or a private early childhood program that you believe meets your child's special education needs. You are responsible for the costs, unless it can be proven at a due process hearing that the district has failed or is unable to provide your child with an appropriate education and the school you chose is appropriate to meet your child's educational needs.

What must I do if I plan to ask the school district to reimburse me for the costs of the nonpublic (private) school?

If you plan to place your child in a nonpublic (private) school and seek reimbursement from the district, you must inform the school district at an IEP meeting or provide the school district with written notice at least 10 days (excluding weekends only) prior to the enrollment of your child in the nonpublic (private) school. You must state your disagreement with the school district's IEP, the placement proposed by the school district and your intention to enroll your child in a nonpublic (private) school.

If the school district has provided you with written notice of its intent to evaluate your child before your removal of your child from the public school, you should make your child available to the school district for evaluation in order to protect your claim for reimbursement.

Failure to inform the school district of your intention to make a private placement at public expense, failure to make your child available for evaluation, or other unreasonable action on your part could result in an administrative law judge's decision to reduce or deny reimbursement for the private placement.



PLACING YOUR CHILD IN A NONPUBLIC (PRIVATE) SCHOOL – DUE TO PREFERENCE

If I have placed my child in a nonpublic school because I prefer the type of education offered by the nonpublic school, does my child have a right to special education and related services from the public school?

A student with a disability who is enrolled in a nonpublic school does not have an individual entitlement to receive some or all of the special education and related services that he or she would receive if enrolled in the public school. However, your child does have a right to be referred to the child study team for an evaluation. If an evaluation is warranted, the team must conduct assessments at no cost to you to determine whether your child is eligible for special education and related services. If the IEP team determines that your child is eligible, a service plan will be written only if your child will be receiving services.

What are my rights if I disagree with the evaluation or with the determination of eligibility?

You may request mediation or a due process hearing if the child study team decides an evaluation is not warranted or if you disagree with the assessment plan. You may request an independent evaluation at no cost to you, if you disagree with the evaluation conducted by the team. You may also request mediation or a due process hearing if you disagree with the determination of eligibility. (See the sections on mediation and due process hearing, pages 12 and 13.)

If my child is determined eligible and I disagree with the proposal for services, what are my rights?

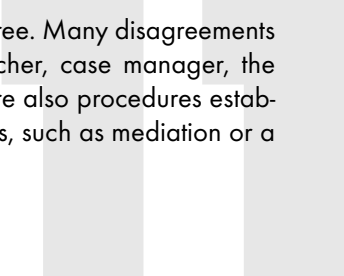
You do not have the right to request mediation or a due process hearing to disagree with the special education and related services that are proposed for your child. This is so even when the district decides not to provide any services.

For disagreements regarding the provision of services by your district of residence, you may request a complaint investigation. The complaint investigation will determine whether the district of residence used the appropriate procedures in determining which children will receive services, what services will be provided, how and where the services will be provided and how the services that are provided will be evaluated.

RESOLVING DISAGREEMENTS

What happens if I disagree with the school district over the identification, evaluation, classification, educational placement or the provision of a free, appropriate public education?

There may be a time when you and the school district disagree. Many disagreements can be resolved by communication with your child's teacher, case manager, the school principal, or other school district personnel. There are also procedures established under state and federal law to address your concerns, such as mediation or a due process hearing.



VOLUNTARY MEDIATION

What is mediation?

Mediation is a way to discuss and resolve disagreements between you and the school district with the help of a trained, impartial third person known as a mediator.

Where and when does mediation occur?

Mediation occurs at a meeting (conference) held by a mediator from the New Jersey Department of Education at a time and place reasonably convenient to the participants. The meeting will be held within 10 days of receipt of a written request.

How are mediators selected?

The New Jersey Department of Education maintains a list of qualified mediators who are knowledgeable about special education laws and regulations. Mediators are selected from the list on a rotating basis. When a request for mediation is received, the next available mediator is assigned to conduct the mediation conference.

Who may ask for mediation?

Either you or the school district may ask for mediation if there is a disagreement.

How much does mediation cost?

Mediation is provided at no cost to you or the school.

How can I request mediation?

You must submit a written request to:	The request for mediation must:
Barbara Gantwerk, Director Office of Special Education Programs New Jersey Department of Education P.O. Box 500 Trenton, New Jersey 08625-0500	State the issue (problem); Specify the relief (solution) sought; and Show that a copy of the request was sent to the school district.

A request form that may be used to ask for mediation is attached to the end of this booklet.

May I bring an advocate or lawyer to the mediation conference?

You may bring an advocate and/or lawyer with you to help you in the mediation conference. The school district may also bring a lawyer to the mediation conference.

What happens to my child during mediation?

From the time a proper request for mediation is received until the mediation is completed, your child's classification, program or placement cannot be changed unless you agree with the school to make the change or emergency relief (see page 15) is given.



What happens if an agreement is reached? If an agreement is not reached?

If you and the school district reach an agreement, it will be written and signed by both of you. If discussions during mediation do not result in a written agreement, then only the date and the names of persons at the mediation will be recorded. Mediation discussions are confidential and may not be used as evidence in a hearing.

What happens if the parties need more time to complete the mediation?

If both parties agree that more time is needed to obtain additional information or explore options, the mediator may “adjourn” the mediation. Mediation will be put on “hold” and another mediation conference will be held when the agreed upon activity is completed.

What happens if the school district fails to comply with a mediated agreement?

If you believe that the school district has not implemented the mediated agreement as written, you may request enforcement of the agreement by writing to the director of the Office of Special Education Programs. (See page 12.)

What may happen if I do not want to mediate?

Mediation is voluntary and may not be used to delay or deny your right to a due process hearing. However, the school district may establish procedures that require you to meet with a state mediator to discuss the benefits of mediation, if you choose not to use the mediation process.

DUE PROCESS HEARINGS

What is a due process hearing?

A due process hearing is a legal process in which the resolution of a disagreement between you and the school district is decided by an administrative law judge (ALJ) from the Office of Administrative Law (OAL).

Who can ask for a due process hearing?

Either you or the school district can ask for an impartial due process hearing if there is a disagreement over the identification, evaluation, placement or provision of a free, appropriate public education to your child.

How can I request a due process hearing?

You must submit a written request to:	The request must:
Barbara Gantwerk, Director Office of Special Education Programs New Jersey Department of Education P.O. Box 500 Trenton, New Jersey 08625-0500	Give the name and age of the child; Give the child's address; Identify the school the child is attending; Describe the problem and facts relating to the problem; Propose a solution to the problem; and Show that a copy of the request was sent to the school district.

A form that may be used to request a due process hearing is attached to the end of this booklet. Failure to provide the required information may result in a reduction of the award of any attorney fees to which you may be entitled if you win your case.



Can I request mediation and a due process hearing at the same time?

Yes. Either you or the school district may request mediation as part of a request for a due process hearing.

What happens when a request is received by the Office of Special Education Programs?

When a due process hearing request is received, a representative of the Office of Special Education Programs will contact you and the school district (the parties) to offer mediation, if it has not already been requested. If either party does not agree to mediate, the representative will schedule a hearing date and the case will be transmitted directly to the Office of Administrative Law for a hearing. If the parties are not available to schedule a hearing date or the parties cannot agree to a hearing date, the case will be transmitted and a date will be assigned by the Office of Administrative Law.

If the parties agree to mediate, a conference will be conducted within 10 days of the request. If the mediation results in agreement, the matter will be considered settled. If the parties cannot agree, the case will be transmitted to the Office of Administrative Law for a hearing. If both parties agree in writing that more time is needed to obtain additional information or explore options, an administrative law judge may grant an adjournment. If granted, the adjournment extends the deadline for the decision and allows time for the parties to conduct the agreed upon activities. When the activities are completed, another mediation conference will be held.

How long does it take for the case to be decided?

The due process hearing must be completed, and a copy of the decision mailed to you and the school district within 45 days of the request for the due process hearing unless specific extensions of time have been granted by the ALJ.

What happens to my child while the case is being decided?

No change may be made to your child's classification, program or placement during the pendency of any administrative or judicial proceeding unless you and the school agree, or emergency relief is granted. If the due process hearing involves initial admission to public school, your child must be placed in an interim public school program agreed upon by you and the school district until the proceedings are completed.

EXPEDITED DUE PROCESS HEARINGS

What is an expedited due process hearing?

An expedited due process hearing is a hearing before an ALJ on disciplinary matters. If you disagree with the determination of the IEP team that your child's behavior was not a manifestation of his disability, you may request an expedited hearing. (See Commonly Used Terms, Manifestation Determination, page 21.) If the school district believes it is dangerous for your child to remain in his current placement and you and the district cannot agree to an appropriate placement, the district must request an expedited hearing to remove your child.



What is the difference between an expedited due hearing and other due process hearings?

The written decision is issued within 45 days of the request without exceptions or extensions to that timeline.

Is mediation available as part of an expedited hearing?

Yes. Mediation is available.

EMERGENCY RELIEF HEARING

What is an emergency relief hearing?

An emergency relief hearing is a due process hearing that is held quickly and without the opportunity for mediation.

What issues are considered an “emergency?”

Some issues may be considered an “emergency” if it is determined that petitioner will suffer irreparable harm unless an immediate decision is granted.

While you and the district are disputing the long-term issues, one or more issues may require an immediate decision because, for example, your child’s program has been terminated or is about to be terminated or disciplinary action is being proposed. As part of your request for a due process hearing or expedited due process hearing, you may request an emergency relief hearing to decide the immediate issue until the long-term issues are decided.

Other disagreements require an immediate decision because they are related to your child’s participation in a school function such as, a field trip or graduation ceremony that is about to occur. Once the issue is decided, no other hearing is necessary.

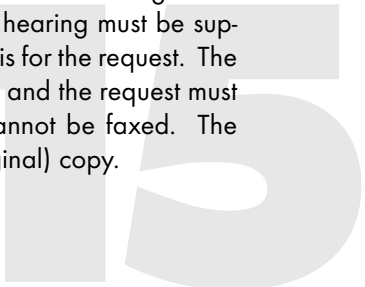
How is emergency relief decided?

Emergency relief may be granted if the ALJ determines that:

- The petitioner will suffer irreparable harm if the requested relief is not granted;
- The legal right underlying the petitioner’s claim is settled;
- The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
- When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

How do I request an emergency relief hearing?

In addition to the information required for requesting a due process hearing or an expedited due process hearing, requests for emergency relief hearing must be supported by an affidavit or notarized statement specifying the basis for the request. The applicant must provide a copy of the request to the other party and the request must note that a copy was sent. Requests for emergency relief cannot be faxed. The Office of Special Education Programs must receive a true (original) copy.





The following are due process rights for both parties:

- The parent has the right to be advised and accompanied at the due process hearing by legal counsel and by individuals with special knowledge or training regarding children with disabilities. The district must be represented by legal counsel;
- Either party may present evidence, require the attendance of witnesses and cross-examine witnesses;
- Either party may ask the ALJ to stop the introduction of any evidence, including any evaluations or recommendations based upon those evaluations, that has not been exchanged at least five days before a due process hearing or at least two days before an expedited due process hearing; and
- Either party may get a written or electronic verbatim record of the hearing. You have the right, at your option, to a written or electronic word for word record of the hearing and the findings of fact and decision. The record will be provided to you at no cost.

You have the right to:

- Ask for and receive, from your school district, a list of any free or low-cost legal and other advocacy services available. The Office of Special Education Programs sends you this list when you ask for a due process hearing;
- See the list of the ALJs and their qualifications which is maintained by the OAL;
- Have the hearing open to the public;
- Have your child present at the hearing;
- Have an interpreter present, if needed, at no cost to you; and
- Have the hearing held at a time and place reasonably convenient to you.

Students with disabilities who are over age 21 and are receiving special education services have the right to request mediation or a due process hearing to resolve a dispute regarding identification, evaluation, placement or provision of a free, appropriate public education.

Copies of due process decisions are provided to the State Special Education Advisory Council (SSEAC) and are available to the public after personally identifiable information has been removed.

Administrative Law Judges

- Hearings cannot be conducted by a person employed by any public agency involved in the education or care of your child or otherwise having a personal or professional conflict of interest. In New Jersey, the hearing is always conducted by an administrative law judge from the Office of Administrative Law. An ALJ is not considered an employee of a public agency involved in the education or care of your child solely because he or she is paid to conduct the due process hearing.
- The decision made by an ALJ is final and must be obeyed by you and the school district unless either party appeals the decision to a state or federal court.



ATTORNEY FEES

How can I recover attorney fees?

You may request an order from either a state or federal court to award reasonable attorney fees and costs within the limits of the law if you win the case either through a settlement or a hearing decision.

Can attorney fees be denied or reduced?

Attorney fees may not be awarded relating to any meeting of the IEP team unless the meeting occurs as a result of an order of an administrative law judge.

The award of attorney fees may be reduced if during the proceeding you unreasonably delayed the settlement or decision in the case, the time spent and services furnished were excessive or the fees charged by your attorney exceed reasonable rates.

COMPLAINT INVESTIGATION

What is complaint investigation?

Complaint investigation is a procedure to assure that the school district is complying with federal or state statute and/or regulation regarding special education. A complaint investigation may be requested when a violation of special education law is suspected. A complaint investigation may be requested on behalf of an individual child or on behalf of a group of children, such as a particular class, grade or school.

Who can request a complaint investigation?

Anyone can request a complaint investigation by mailing a signed, written request to:

Barbara Gantwerk, Director
Office of Special Education Programs
New Jersey Department of Education
P.O. Box 500
Trenton, New Jersey 08625-0500

Is there a time limit for requesting a complaint investigation?

Yes. Time limits for requesting a complaint investigation have been established so that the issues are not too out of date to arrive at an appropriate resolution. The complainant (person requesting the investigation) must submit the request no later than one year after the violation occurred. There are two exceptions to this time limit. A longer period may be reasonable because the violation is continuing or because the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the request is received.

What information must be included in the request for a complaint investigation?

The request must:

- State the specific violation of special education law that you believe has occurred;
- Provide the facts on which the statement is based;
- State when the alleged violation occurred; and
- State whether compensatory services are being requested.

A model form to assist you in requesting a complaint investigation is provided at the end of this booklet.





Will I have the opportunity to provide information about the complaint?

Yes. The complainant is given the opportunity to provide additional information, either orally or in writing about the complaint.

How will I be notified of the results of the complaint investigation?

You will receive a written report of findings, conclusions and resolutions within 60 calendar days of receipt of the request, unless an extension is granted for extenuating circumstances. The decision of the Department of Education is final.

DISCIPLINARY PROCEDURES

Can the school remove my child from his or her current placement for disciplinary reasons?

Yes. School authorities can suspend your child from his or her current placement for not more than 10 school days at a time for any violation of school rules if nondisabled children would be subjected to removal for the same offense.


Can the school district remove my child repeatedly for separate incidents of misconduct?

Yes. School officials can remove your child from his or her current placement for up to 10 school days at a time, whenever discipline is appropriate, and such removal is consistent with the treatment of nondisabled children. In addition, school officials also may implement additional suspensions of up to 10 school days at a time in the school year for separate incidents of misconduct if educational services are provided for the remainder of the removals, to the extent required. School officials do not have to involve you in the decision to remove your child or in the decision about the services to be provided. However, school officials cannot remove your child in a series of short-term suspensions (up to 10 school days at a time) if these suspensions constitute a pattern that is a change of placement.

What steps must the school take when implementing a series of short-term removals?

A series of short-term removals from your child's current educational placement may be a pattern that results in a change in placement when the total number of school days accumulates (adds up) to more than 10. School officials in consultation with the case manager determine whether the series of short-term removals is a change in placement. The determination of whether the series of short-term removals constitutes a change in placement is based on the length of each removal, the total amount of time your child is removed, and the proximity (nearness) of the removals to each other.

If the series of short-term removals is not a change in placement, your child may be removed from his or her current placement. School district officials in consultation with the child's case manager and special education teacher determine the extent to which services are necessary to enable your child to progress appropriately in the general education curriculum and to advance appropriately toward achieving the goals set out in your child's IEP. If the school did not conduct a functional behavioral assessment, and implement a behavioral intervention plan, the IEP team must meet to develop an assessment plan. When the assessments are completed, the IEP team will meet to develop appropriate behavioral interventions to address the behavior. If your child already has a plan, the IEP team will meet to review the plan and its implementation.



If school officials in consultation with the case manager determine that the series of short-term removals is a change of placement, the IEP team must meet to determine whether the misconduct is a manifestation of the student's disability (a **manifestation determination**). (See the section on Commonly Used Terms, Manifestation Determination, page 21.) As a member of the IEP team, you have a right to participate in these meetings.

If the school did not conduct a functional behavioral assessment, and implement a behavioral intervention plan, the IEP team must meet to develop an assessment plan. When the assessments are completed, the IEP team will meet to develop appropriate behavioral interventions to address the behavior. If your child already has a plan, the IEP team will meet to review the plan and its implementation.

If the determination is made that the behavior is related to your child's disability, then your child may not be removed from the current educational placement (except in the case of weapons or drugs) until the IEP team develops a new IEP and decides upon a new placement. If it is determined that your child's behavior is not a manifestation of your child's disability, then your child may be disciplined as any other child except that the school must continue to provide services to your child. The IEP team decides the extent to which services are necessary to enable the child to progress appropriately in the general education curriculum and to advance appropriately toward achieving the goals set out in the child's IEP.

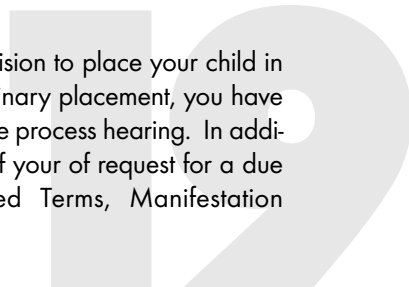
You may disagree with the determination to remove your child for more than 10 cumulative school days by requesting mediation, a due process hearing or an expedited due process hearing.

What steps must the school take to suspend my child for more than 10 consecutive school days?

Removal from your child's current educational placement for more than 10 consecutive school days for disciplinary reasons is a change in placement. If the school district wants to suspend your child for more than 10 consecutive school days, the IEP team must hold a meeting to review the behavioral intervention plan that was developed for your child as part of his or her IEP. If a behavioral intervention plan was not part of your child's IEP, then the IEP team must conduct a functional behavioral assessment and develop a behavioral intervention plan. In addition, the IEP team must determine whether the behavior is or is not a manifestation of your child's disability. As a member of the IEP team, you have a right to participate in these meetings.

If the determination is made that the behavior is a manifestation of your child's disability, then your child may not be removed from the current educational placement (except in the case of weapons or drugs) until the IEP team develops a new IEP and decides upon a new placement. If it is determined that the behavior is not a manifestation of your child's disability, then your child may be disciplined as any other child except that the school must continue to provide services to your child. The IEP team decides the extent to which services are necessary to enable your child to progress appropriately in the general education curriculum and to advance appropriately toward achieving the goals set out in your child's IEP.

If you disagree with the manifestation determination, the decision to place your child in an interim alternative educational setting or any other disciplinary placement, you have the right to request a due process hearing or an expedited due process hearing. In addition, you may request an emergency relief hearing as part of your request for a due process or expedited hearing. (See Commonly Used Terms, Manifestation Determination, page 21).





What steps can the school take to remove my child for discipline if weapons or drugs are involved?

The school district may place your child in an interim alternative educational setting for up to 45 days, if your child:

- Possesses a weapon at, or carries a weapon to school or a school function; or
- Possesses or uses illegal drugs, or sells or solicits the sale of controlled substances while at school or a school function.

The IEP team will decide the interim alternative educational setting and the steps to be taken at the end of the 45-day placement.

What steps can the school take to remove my child for danger to self or others?

The school district may get an order from an ALJ to change your child's educational placement to an interim alternative educational setting for up to 45 days, if there is a danger that your child or others are likely to be injured if your child stays in the current placement. The ALJ will decide the interim alternative educational setting.

Placement During the Pendency of Mediation or a Due Process Hearing for Disciplinary Action

If you initiate mediation, a due process hearing, or an expedited due process hearing for a removal of more than 10 cumulative school days, the removal may be carried out while the disagreement is being resolved.

If you initiate mediation, a due process hearing or an expedited due process hearing for a removal of more than 10 consecutive school days, your child will remain in his or her current educational placement until a final decision has been reached or you and the school agree upon another placement.

In cases where your child has been placed in an interim alternative educational setting for weapons, drugs or due to dangerousness, your child may remain in the interim alternative educational setting for a period not to exceed 45 days. Thereafter, your child will return to the previously agreed upon educational placement unless either an ALJ orders another placement or you and the school district agree to another placement.

COMMONLY USED TERMS

Evaluation – The tests and other assessment procedures, including a review of information, that are used to decide whether your child is eligible for special education services.

Free, Appropriate Public Education (FAPE) – Special education and related services that are provided at public expense, under public supervision and direction, and without charge; meet state and federal requirements; include preschool, elementary school, or secondary school education; and are provided according to an IEP.

Functional Behavioral Assessment – The process of coming to an understanding of why a student engages in challenging behavior and how student behavior relates to the environment. The purpose of the functional behavioral assessment is to gather information to better understand the specific reasons for the student's problem behavior. (*Functional Behavioral Assessment: Policy Development in Light of Emerging Research and Practice*, National Association of State Directors of Special Education, March 1998)

Identification – The decision to evaluate a child to determine whether special education services are needed.

Manifestation Determination – is the process for reviewing your child's misconduct (behavior) to determine whether a removal that is a change of placement can be implemented as a disciplinary action. The review is conducted at a meeting of the IEP team and other qualified personnel. The team must consider all relevant information in terms of your child's misconduct (behavior). On the basis of that review, the team must answer the following questions:

- In relation to the misconduct, are the IEP and placement appropriate?
- In relation to the misconduct, were the services, supplementary aids and services, and behavior intervention strategies provided as specified in the IEP?
- Does your child's disability impair his or her ability to understand the impact and consequences of the misconduct (behavior)?
- Does your child's disability impair his or her ability to control the behavior?

If the team answers "no" to the first or second question above, or "yes" to the third or fourth question above, the behavior must be considered a manifestation of the student's disability.

Least Restrictive Environment (LRE) – To the maximum extent appropriate, children with disabilities are educated with children who are not disabled and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature and severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Stay-Put – The requirement that no change can be made to the education of a student who is or may be determined eligible for special education during mediation or due process. The student must stay in his or her current program or placement, unless you and the school district agree to a change or an ALJ orders a change.

NEW JERSEY DEPARTMENT OF EDUCATION

REQUEST FOR MEDIATION/DUE PROCESS HEARING/EXPEDITED DUE PROCESS HEARING

Date: _____

To: **Barbara Gantwerk, Director**
Office of Special Education Programs
NJ Department of Education
P.O. Box 500
Trenton, NJ 08625-0500

From: _____
(Name of parent or school district submitting the request)

Address: _____

Phone: (_____)_____-_____
Fax: (_____)_____-_____

Please check whether you will be represented by _____an attorney or assisted by _____an advocate.

Name of attorney or advocate: _____

Address: _____

Phone: (_____)_____-_____
Fax: (_____)_____-_____

I am/we are requesting (check one):

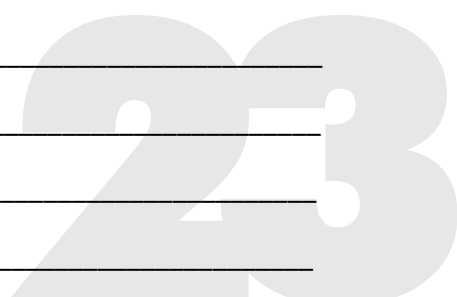
☐ Mediation only ☐ Mediation and a due process hearing ☐ Mediation and an expedited due
process hearing
☐ Due process hearing only ☐ Expedited due process hearing only

On behalf of: _____
(Child's name) (Date of birth)

Child's Address (If different from parent's address): _____

District of Residence: _____

School the student attends: _____



You may request an emergency relief hearing as part of your request for either a due process hearing or an expedited hearing, if you believe an immediate decision required and you will suffer irreparable harm if the relief is not granted. Complete the request form on page 25 and attach.

Please describe the nature of the problem and any facts relating to the problem.
(Attach additional pages if necessary.):

Please describe how this problem could be resolved. (Attach additional pages if necessary.):

Signature of party submitting request: _____

____Please check to verify that a copy of this request was sent to other party:

Name of other party:_____

Address: _____

____Phone: (____) -_____

Note to parent(s) requesting a due process hearing: The IDEA Amendments of 1997 require parent(s) or their attorneys to provide the information contained within this form to the NJ Department of Education and the district of residence. Failure to provide this information may result in a reduction in the award of attorneys' fees. (20 U.S.C. 1415 (b)(7), (i)(3)(F). **(Revised 7/00.)**

NEW JERSEY DEPARTMENT OF EDUCATION

REQUEST FOR AN EMERGENCY RELIEF HEARING

Emergency relief may be requested when an immediate decision is required and the petitioner would suffer irreparable harm if the relief is not granted. These circumstances include, but are not limited to, disputes where the student's program will be terminated, the student will be denied participation in a school function or disciplinary action is being proposed.

Please note: To meet the requirements for requesting emergency relief, complete each page of this three page form and have the form notarized. Facsimile transmissions (faxes) will not be accepted.

To: **Barbara Gantwerk, Director**
Office of Special Education Programs
NJ Department of Education
P.O. Box 500
Trenton, NJ 08625-0500

From: _____
(Name of parent or school district submitting the request)

Address: _____

Phone: (_____)_____-_____
Fax: (_____)_____-_____

Please check whether you will be represented by _____an attorney or assisted by _____an advocate.

Name of attorney or advocate: _____

Address: _____

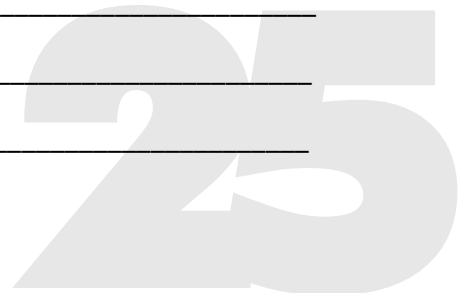
Phone: (_____)_____-_____
Fax: (_____)_____-_____

On behalf of: _____
(Child's name) (Date of birth)

Child's Address (If different from parent's address): _____

District of Residence: _____

School the student attends: _____



Request for emergency relief – Part 2

Please describe the nature of the problem and any facts relating to the problem.
(Attach additional pages if necessary.):

Please describe how this problem could be resolved. (Attach additional pages if necessary.):

☐ Please check to verify that a copy of this request was sent to other party:

Name of other party: _____

Address: _____

_____ Phone: (_____) - _____



Request for emergency relief – Part 3

Date: _____

Name of petitioner: _____, of full age, being duly sworn upon his or her oath according to law deposes and says:

1. I am the petitioner in the foregoing matter.
2. I have read the petition. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Signature of Petitioner: _____

Sworn and subscribed to before me this _____ day of _____, _____

Signature of Notary Public or other person authorized to administer an oath or affirmation



NEW JERSEY DEPARTMENT OF EDUCATION
REQUEST FOR COMPLAINT INVESTIGATION

Date: _____

To: **Barbara Gantwerk, Director**
Office of Special Education Programs
NJ Department of Education
P.O. Box 500
Trenton, NJ 08625-0500

From: _____
(Name of person submitting the request)

Address: _____

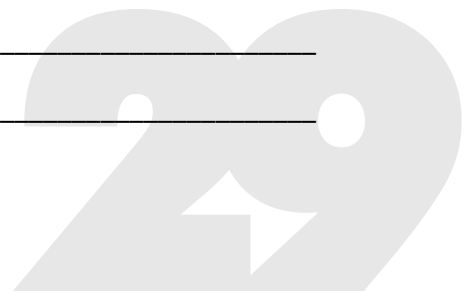
Phone: (_____)_____-_____

Name the student or specify the group of students affected by the alleged violation: _____

School where alleged violation(s) occurred: _____

District of Residence: _____

Briefly state the specific violations(s) of special education that you believe occurred. Include the relevant facts.
(Attach additional pages if necessary.):



Specify the period of time or date(s) when the alleged violation(s) occurred: _____

Is the alleged violation(s) continuing at present? _____Yes _____No

Are compensatory services being requested? _____Yes _____No

If you have written documentation from the school (letters, IEP, notices, etc.) that you believe will assist in clarifying or verifying the violation, please submit it with this request.

Signature: _____

RESOURCES

For help in understanding your rights, you may contact any one of the following:

School District Representative

Phone Number

Statewide Parent Advocacy Network (SPAN) at (800) 654-7726

NJ Protection and Advocacy, Inc. at (800) 922-7233

New Jersey Department of Education through its _____ County Office:

County Supervisor of Child Study

Phone Number



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